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EX PARTE OR LATE FILED

PACIFIC TELESIS
Group-Washington

November 15, 1996

EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *CC Docket No. 94-1*

Today the attached letter was delivered to Ms. Jane Jackson, Deputy Division Chief of the Competitive Pricing Division, Mr. A. Richard Metzger, Jr., Deputy Bureau Chief of the Common Carrier Bureau and Mr. Jim Schlichting, Chief of the Competitive Pricing Division.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely,

Jay Bennett

Attachments

cc: J. Jackson
R. Metzger
J. Schlichting

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Director
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PACIFIC TELESIS
Group-Washington

November 15, 1996

Ms. Jane E. Jackson
Deputy Chief
Competitive Pricing Division
Federal Communication Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Jackson:

Attached is an analysis of the Commission's decisions regarding contract carriage prepared by Pacific Telesis.

Pacific Telesis requests that the Commission permit local exchange carriers ("LECs") to offer contract prices for those services that the Commission finds subject to substantial competition in a manner consistent with the attached analysis (Attachment I). Contract carriage is consistent with a 1991 Commission Order adopting rules permitting AT&T to offer contract rates pursuant to streamlined regulation for services subject to substantial competition.[1] Furthermore, the Commission already has solicited comment on this contract carriage proposal for competitive access services, and the proposal is supported by a number of parties who argue that it will increase competition and benefit consumers. (For your convenience, an index and summary of those comments from CC Docket No. 94-1 is included as Attachment II.) Based on this record, the Commission should act promptly to allow LECs to offer services pursuant to individually negotiated contracts.

Pacific believes that the record and developments in the marketplace fully support a Commission decision to issue immediately a Report and Order in CC Docket No. 94-1. In light of the volume of comments filed during the last year in that proceeding, the record is sufficiently current and complete to guide the Commission's decision on contract carriage. Further, passage of the Telecommunications Act of 1996 and the

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[1] Contracts are one essential tool for competing in today's telecommunications marketplace. In an October 17, 1996 letter in CC Docket No. 96-61, AT&T indicated that it has entered into approximately 5,600 contract tariffs to date. Letter from Gerard Salemme, AT&T, to Regina M. Keeney, Chief, Common Carrier Bureau, FCC (Oct. 17, 1996).

Commission's 1991 Order have eliminated entry barriers and opened LECs to more exchange access competition than ever before. At a minimum, the Commission should propose in the upcoming NPRM on Access Reform that LECs be permitted to offer contracts when facing substantial competition.

Regardless of the course the Commission elects, the attached analysis provides language that should be helpful in preparing either a Report and Order or a Notice of Proposed Rulemaking.

Thank you for your consideration.

Sincerely,

Kay Bennett

Attachments

cc: Jim Schlichting
A. Richard Metzger, Jr.

CONTRACT CARRIAGE WOULD SUBSTANTIALLY BENEFIT CUSTOMERS IN MANY ACCESS MARKETS

As telecommunications markets transition from monopolies to competition, regulators at both the federal and state levels have increasingly allowed common carriers to negotiate terms and conditions of service with end users. These negotiated arrangements are often memorialized in contracts and then filed with regulatory commissions so that similarly situated customers can request similar terms and conditions for themselves. These arrangements are enormously beneficial to customers by allowing them to obtain tailored offerings to meet their specific service needs. Carriers benefit by gaining the flexibility they need to respond to competition. Contract carriage is the right mechanism to permit local exchange carriers that face increasing competition to respond to competition while regulators retain some regulatory oversight. Although AT&T has been declared a nondominant carrier,[1] and is now subject to mandatory detariffing,[2] contract carriage served as a measured, interim mechanism between traditional regulation and full deregulation. The Commission's use of transitional contract carriage for AT&T is instructional on how the mechanism can work for LECs.

In *Competition in the Interstate Interexchange Marketplace*,[3] the Commission adopted new streamlined regulations under Section 203(a) of the Communications Act (the "Act") that allow AT&T to tariff the interstate long distance services it offers certain business customers.[4] The regulations permitted AT&T to offer services pursuant to individually negotiated contracts. At least fourteen days prior to the effective date of a contract, AT&T had to file a tariff with the Commission, based on the terms of the contract and containing all the information required under Section 203 of the Act. The tariff had to contain, at a minimum: (1) the term of the contract, including any renewal options; (2) a brief description of each of the services provided under the contract; (3) minimum volume commitments for each service; (4) the contract price for each service

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[1] Motion of AT&T Corp. to be Reclassified as a Nondominant Carrier, 11 FCC Rcd 3271 (1995), *recon. pending*.

[2] Policy and Rules Concerning Interstate Interexchange Marketplace, FCC 96-424 (released October 31, 1996).

[3] 6 FCC Rcd 5880, [69 RR 2d 1135] (1991), *recon. granted in part and den. in part,* 10 FCC Rcd 4562, [77 RR 2d 253] (1995) (hereinafter "*Interexchange Order*").

[4] The Commission's discussion of "business services" focused on services in Basket 3 (the large business services basket) under price cap regulation, as well as those services outside of price cap regulation. The Commission's discussion did not include services in Basket 1 (residential and small business service) and Basket 2 (800 services) under price cap regulation. *Interexchange Order*, 6 FCC Rcd at 5880-81, ¶ 5 and n.5.

or services at the volume levels committed to by the customers; (5) a general description of any volume discounts built into the contract rate structure; and (6) a general description of other classifications, practices and regulations affecting the contract rate.[5]

The regulations further required AT&T to make its contracts generally available to similarly situated customers, so that these regulations are consistent with the nondiscrimination provision in Section 202(a) of the Act.[6] The Commission retained authority to review the tariffs before they take effect to determine compliance with the Act and the Commission's rules, and to suspend or reject the tariffs as necessary. After the tariffs took effect, the Commission retained authority to investigate and adjudicate complaints that tariffs are unlawful.[7]

The Commission concluded in the *Interexchange Order* that its decision to streamline regulation of AT&T's business services served the public interest, since the "business services market is substantially competitive."[8] Though it acknowledged that AT&T's stature as "by far the largest interexchange carrier" gave it "certain advantages in the marketplace," that fact did not negate "the significant forces that are driving competition in this market segment."[9] The Commission relied on four factors in determining that there was sufficient competition in the business services market to constrain AT&T's prices.

First, the Commission determined that the business services market was characterized by substantial demand elasticity. According to the Commission, the record indicated that business customers were "informed and sophisticated purchasers of telecommunications services," who had both "the incentive and ability to evaluate the full range of market options available to them."[10] The Commission relied on market surveys and AT&T's own estimate of its market share in reaching its conclusion.

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[5] 47 C.F.R. § 61.55(c) (1995).

[6] *See* MCI Telecommunications Corp. v. FCC, 917 F.2d 30 (D.C. Cir. 1990); Sea-Land Service, Inc. v. ICC, 738 F.2d 1311 (D.C. Cir. 1984).

[7] *Interexchange Order*, 6 FCC Rcd at 5894, ¶ 74.

[8] *Interexchange Order*, 6 FCC Rcd at 5887, ¶ 36. The Commission's conclusions, as well as the findings underlying them, were upheld on reconsideration. *See* 10 FCC Rcd at 4562.

[9] *Interexchange Order*, 6 FCC Rcd at 5887, ¶ 36.

[10] *Id.*, ¶ 37.

Second, the Commission found that the business services market was marked by substantial supply elasticity as well. The two factors that determine supply elasticity -- the ability of existing competitors to acquire significant additional capacity and low entry barriers -- were clearly present in the marketplace. To that end, the Commission noted that MCI and Sprint could immediately absorb as much as fifteen percent of AT&T's business traffic during the day without any expansion of their existing capacity.[11]

Third, the Commission relied on AT&T's pricing of business services under price cap regulation as well as unrefuted evidence that AT&T's market share is substantially lower for business services than it is in other markets. The Commission placed special emphasis on the fact that AT&T's prices remained below the price cap limits set for its business services, as well as the fact that its market share for business services was about 50 percent.[12]

Finally, the Commission took pains to refute contrary arguments that the business services market was not substantially competitive. For example, the Commission dismissed as unpersuasive allegations that AT&T had cost and size advantages over competitors, as well as arguments that there was no competition in rural areas because most business customers were not located there.[13]

It should be noted that the Commission established and implemented these contract carriage regulations in a manner that offers maximum protection to consumers. First, as stated above, the regulations required AT&T to make its contracts generally available to similarly situated customers, thus reducing the risk of discrimination. Though some controversies have arisen, most have involved resellers and not "end user" customers. Though the Commission noted in the *Interexchange Order* that its "long-standing policy barring restrictions on resale applies with full force to contract carriage,"[14] some resellers have complained to the Commission that they have been unable to obtain service pursuant to specific contract tariffs because AT&T refused to fill their orders.

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[11] *Id.* at 5888, ¶ 43.

[12] *Id.* at 5889-90, ¶¶ 50-51. In emphasizing this latter statistic, the Commission noted that market share alone is not necessarily a reliable measure of competition, particularly in markets with high supply and demand elasticities. *Id.*

[13] *Id.* at 5891-92, ¶¶ 59, 61-62.

[14] *Id.* at 5901, ¶ 115.

Some have criticized contract carriage because they fear that, under the filed rate doctrine, AT&T has the ability to modify a tariff unilaterally, even over a customer's objection. The filed rate doctrine holds that in cases where both a contract and a tariff govern a carrier's provision of services to a customer, in the event of a conflict between the two, the tariff controls.[15] Some fear that this doctrine, coupled with Section 203 of the Act, permits a carrier to modify the terms of a contract through a unilateral tariff filing.

A close reading of the law indicates that these fears are unfounded. Well-established tariff law severely constrains the ability of a carrier to modify a tariff over the objections of a customer. Since the 1970s, the Commission has recognized that customers entering into long-term service relationships with a carrier are entitled to the benefits of that relationship, absent special circumstances. Thus, tariff revisions that alter material terms and conditions of a long-term contract will be upheld only if the carrier can demonstrate "substantial cause for change."[16] The "substantial cause" doctrine was imported into the contract carriage arena in the *Interexchange Order*.[17] There, the Commission emphasized the fact that tariff provisions were the result of individual negotiation; thus, if a carrier were permitted to alter a contract unilaterally, the benefits of that negotiated agreement would be diminished.[18] The Commission also stressed that, given the substantial competition in the business services market, it was unlikely AT&T would attempt to modify established tariff provisions.[19] All of these principles are grounded in the prohibition of unreasonable practices by carriers in Section 201(b) of the Act.[20]

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[15] *See* Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 582 (1981); American Broadcasting Companies, Inc. v. FCC, 643 F.2d 818 (D.C. Cir. 1980).

[16] RCA American Communications, Inc., 84 FCC 2d 353, 358 (1980).

[17] 10 FCC Rcd at 4572-4574, ¶¶ 23-25.

[18] *Id.*

[19] *Id.*

[20] There is an argument that the prohibition of unreasonable practices in Section 201(b) of the Act cannot be invoked to limit the rights of a carrier to modify a tariff unilaterally. Although this argument seems attractive at first blush, scrutiny reveals that, in practice, it goes too far. It is well-established that tariff revisions by a carrier can be rejected if the Commission finds that any of the proposed terms are patently unlawful. *See* Maine Public Advocate v. FCC, 828 F.2d 68 (1st Cir. 1987). The Commission also

This analysis should lead the Commission to conclude that LEC contract carriage would benefit consumers and competition in the access market as well. The Commission already has solicited comment on whether LECs should be allowed to offer services pursuant to individually negotiated contracts. Just over one year ago, on September 20, 1995, the Commission issued its Second Further Notice of Proposed Rulemaking[21] in which it requested comment on the question: "Should the Commission allow the...LECs to offer individually negotiated contracts for services subject to streamlined regulation...?"[22]

Numerous parties voiced support for the contract carriage proposal. U S West, for example, argues that "contract carriage should be allowed by the Commission for LEC services subject to streamlined regulation," since "both the LEC and its customers benefit from the increased flexibility of tailoring service offerings for specific needs."[23] Similarly, BellSouth advocates the proposal, calling contract carriage "a significant pro-competitive step" with "multiple benefits."[24] Ameritech notes that "contract carriage would benefit customers by enabling LECs to respond directly and specifically to customer needs,"[25] and Pacific Bell argues for "contract carriage of all services in specific, limited competitive geographical areas, based on objective criteria."[26]

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can suspend and ultimately prevent a tariff from taking effect based on a finding that a term is unlawful as an unreasonable practice under Section 201(b) of the Act. *See* Capital Network Systems, Inc. v. FCC, 28 F.3d 201 (D.C.Cir. 1994). Thus, while one might argue that the mere unilateral filing by a carrier of a revision to a tariff is permitted under Section 203, the revision can nonetheless be rejected as unlawful and prevented from taking effect. The consequences to the customer are the same under either legal theory.

[21] *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1; Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 858 (1995).

[22] *Id.* at 926, ¶ 150.

[23] U.S. West Comments at 43.

[24] BellSouth Comments at 56-7.

[25] Ameritech Comments at 40.

[26] Pacific Bell Comments at 42.

Nonetheless other parties, including MCI, Sprint and AT&T, express concern that there is not yet sufficient competition in the access market to permit contract carriage.[27] Sprint argues, for example, that "LECs retain bottleneck control over exchange access facilities, and what competition may exist is minimal."[28] None of these parties, however, explains why contract carriage is not in the public interest.

A careful analysis of the access market reveals that these concerns are unfounded. Indeed, the factors that the Commission relied upon in the *Interexchange Order* as indicia of substantial competition in the business services market are clearly present in the access market in specific geographic areas. Although the geographic areas marked by substantial competition currently are all large metropolitan areas, competition will likely expand to markets in medium and smaller cities in the near future.

Pacific Bell's recent experience reveals substantial competition in California's access markets. There is a growing list of facilities-based service providers which include MFS, TCG, ICG, Time Warner, Cox Enterprises, Linkatel, and Phoenix Fiber Link. First, customers in the access market are to a large degree demand-elastic, and frequently switch telecommunications providers in order to obtain either savings or desired features. For instance, Pacific Bell has recently lost significant traffic volumes to competition because of Pacific Bell's inability to offer contracts for its access services. Pacific Bell's recent losses include half of AT&T's DS3 traffic in San Diego and Sacramento, as well as GTE Mobilenet's Sonet ring in San Diego and its DS1 traffic. Pacific Bell's market share for Hicap Services has declined to 55 percent in both the San Francisco and Los Angeles areas. California is such an attractive market that 68 other companies have been authorized by the California Public Utilities Commission to provide local exchange services. Twenty three additional companies are still awaiting approval. Of those 91 competitive local exchange companies, 48 are offering service using their own facilities. These companies have opened more than 560 new NXX codes (5.6 million new telephone numbers) in areas where Pacific Bell provides service to 90 percent of all their business and residence customers.

In addition, supply elasticity in the access marketplace is high. Pacific Bell has tariffed 119 wire centers for physical collocation in the California market. One hundred sixty six collocation cages have been built in just 71 wire centers. These wire centers carry over 70 percent of all Pacific Bell's switched and special access traffic. In the past six months there has been a 75 percent increase in the number of cross-connects installed

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[27] *See* MCI Comments at 34; Sprint Comments at 25-28; AT&T Comments at 19.

[28] Sprint Comments at 25.

in those wire centers, totaling more than 14,500 DS1s. These cross-connects could easily carry over 65 percent of all of Pacific Bell's switched access traffic. These numbers point to substantial supply elasticity in heavy traffic areas in the market, the very places where contract carriage should first become a reality. What is more, Pacific Bell's average switched access rates are substantially lower than the nationwide average: $0.02 per MOU versus $0.0275 per MOU.

Customers in the access market are well-informed and sophisticated purchasers, with the ability to solicit competitive bids before procuring access services. These customers have both the incentive and the ability to evaluate the full range of market options available to them, and to move rapidly between competitors. Increasingly they are doing so, as Pacific Bell's experiences in the California market indicate. Permitting LECs to offer contract prices for services in such markets is a logical and necessary next step.

For the foregoing reasons, contract carriage should be available to incumbent LECs, in markets where there is substantial competition.

EVIDENCE PROVIDED IN CC DOCKET NO. 94-1 REGARDING CONTRACT BASED TARIFFS

Ameritech	Denying the LECs contract tariffs forces them to compete with one hand tied behind their back. Unfair to LECs and bad for consumers. Distorts the operation of competitive forces resulting in inefficient investment and a suboptimal allocation of societal resources. **(Cmts pp.41-42)** Given the size, sophistication, and resources of LECs' competitors, LECs could not possibly hope to drive and keep their competitors from the marketplace, much less do so without detection. Should permit for streamlined services on 14 days' notice.
AT&T	Would not oppose contract carriage for streamlined services after the Commission finds there to be substantial competition in a relevant market. **(R.Cmts pp.49-51)** RFPs do not qualify under any of the recognized exceptions to the rule requiring geographically-averaged rates through a LEC study area. Would simply allow a LEC to offer a preferential rate to a particular customer. Could result in unreasonable discrimination between customers.
BellSouth	Contract carriage would enable LECs to work with customers to develop specific service applications under contract rates, provided that these rates are made available to other similarly situated customers. A pro-competitive step. **(Cmts pp.55-58)** Contract carriage is a means of satisfying a broad spectrum of needs so that every customer can expect its service requirements will be met. Will stimulate the price and service rivalry that the Commission hopes to engender. Can increase network efficiency and lower costs of providing all services. Same terms and conditions to all similarly situated customers. The marketplace will prevent the LECs from engaging in discriminatory behavior.
Cincinnati Bell	LECs are competitively disadvantaged because they don't have the same flexibility as other providers. This harms competition. **(Cmts p.11)** Must be permitted contract carriage so that competitive advantages do not accrue only to certain providers. Where a business customer receives at least two responses to an RFP, competition exists in that geographic market. **(R.Cmts p.5)**
CompTel	Contract pricing must not be allowed unless all functionally similar services are subject to substantial competition. **(Cmts p.40)**
GSA	Define the competitiveness of contract services by the competition shown for the contracts, not for the constituent services within the contracts. **(Cmts p.16)** Believes there should be additional certifications from the LEC, specifically a statement of the circumstances under which the contract was developed and possibly a certification from the end-use customer that competitively viable offers from other suppliers were solicited and received prior to consummation of the contract with the LEC. Complaint procedures will provide a further safeguard against abuse of these procedures. **(Cmts p.16)**

GTE	Individually negotiated tariffs are important tools that are routinely used by most businesses to meet their customers' needs. **(Cmts p.18)** Contracts should be permitted providing: 1) The Customer must have issued a RFP and 2) At least one provider other than the LEC must have responded. **(Cmts p.19)** Proposed contract should be filed on 21 days' notice, provide support to show that rates will cover direct costs, be excluded from price caps and comparable terms to similarly situated customers in that market Contract tariffs prevent the rates in LECs' generally available tariffs from providing price umbrellas for entrants. **(Cmts p.20)** In markets subject to streamlined regulation, contract tariffs should be permitted. LECs will lack market power to maintain unreasonable differences in rates among customers. **(Cmts p.75)** If LECs can't provide contract tariffs, competitors will know the LEC's best bid for any customer and knowing that competitors will have no incentive to bid significantly below that level. **(Cmts p.76)** Want proprietary treatment for LEC or customer information. **(Cmts p.76)** Restricting LECs from contract tariffs unfairly advantages other competitors and could deprive customers of the ability to obtain the lowest-cost, highest quality service available. **(R.Cmts pp. 53-55)** If multiple providers respond to an RFP, clearly there is competition for those services. GSA's proposal is reasonable.
LDDS WorldCom	Unless adequate safeguards are in place, LECs will use any additional pricing flexibility to discriminate. **(Cmts pp. 35-37)** They will under price their rivals and cross-subsidize their own interLATA services. Should require structural separation of the LECs' wholesale and retail operations. Need safeguards to ensure that the retail operation purchases network inputs on the same terms and conditions as its rivals. Must delay consideration of any further pricing flexibility until after access reform, structural separation, and the need for a wholesale network platform have been addressed.
MCI	Contract carriage should be limited to services for which the LECs have substantial competition, and safeguards must be included to prevent the LECs from unreasonably discriminating among its customers. **(Cmts pp. 34-35)** Recommends the Commission defer any further inquiry for at least three years and then see if competition has advanced enough to permit consideration of this flexibility. Contracts must be excluded from price caps to prevent cross subsidization. Rates must exceed the direct costs of the contract service which differ from the direct costs of the generic service that this contract service replaces. Must be tariffed and available to any similarly-situated customer. Granting the LECs additional pricing flexibility could stifle entry and harm consumers of less competitive services. **(R.Cmts pp.8-9)** The LECs haven't even used the pricing flexibility the Commission has given them. The mere existence of an RFP does not mean there are multiple companies capable of meeting the requirements. Nor does it mean the LECs are disabled from responding to the RFP using generally available tariffs.

MFS	LEC pricing flexibility must be premised solely on actual competition. **(Cmts pp.8-9)** Should apply the same standards as it applied to AT&T. Only upon a demonstration of robust competition in the relevant market where competitors have established a substantial presence is substantial deregulation warranted. It is not clear that additional pricing flexibility is needed for fair competition or can be implemented in a non\discriminatory manner
NYNEX	LECs won't be able to cross subsidize because the market will drive prices down. **(Cmts pp.33-34)** No single generalized offering is sufficient in all circumstances. Large customers circulate a RFP for bids for their telecommunications needs. LECs must have this pricing package to retain any share of this market. The Commission should allow the LECs to use individualized tariffs to respond to RFPs in competitive situations. The IXCs offer unfounded arguments based on the potential for discrimination and cross subsidization. **(R.Cmts pp. 17-19)** Prohibition of contract tariffs would impede the development of real competition, market-based pricing, efficiency and consumer benefits. Agrees with GSA's proposal. Will benefit consumers by stimulating true competition thereby expanding customer choices, improving service options, and promoting lower prices. Alleged fears of some of potential discrimination are unfounded as contract tariffs would be generally available to all similarly-situated customers, terms made public and rates for other services would not be adversely affected since contract services would be removed from price caps.
Pacific Bell	As long as contract tariff's rates exceed direct costs there is no threat to competition. **(Cmts pp.12-13)** The Commission has lagged behind most state commissions in recognizing the benefits of contract based tariffs. The California PUC has permitted contract tariffs since 1987. Pacific has spent eight years developing the guidelines the Commission uses. Contracts filed with the California PUC disclose prices, service descriptions, volumes and term. Customer names are proprietary. Pacific also provides network diagram, price floors and ceilings, and other information to the CPUC under seal. Our competitors ability to offer contract based pricing gives them a competitive advantage. The Commission's concern about reviewing individual wire center data is overstated since there would not be a different filing for each wire center. **(Cmts. pp 44-45)** Same price terms and conditions made available to all similarly situated customers. No limits on resale, generally available tariff will continue to be available to all. Subsequent changes in contract prices will not result in increased price cap headroom since these services will be removed from price caps. No more ability to increase prices for generally tariffed services than exists presently. The Problem with geographic averaging is that there's only two choices: Reduce prices everywhere including where they are already too low or not reduce everywhere surrendering low-cost markets to competitors. . **(R.Cmts pp. 6-7)**
Southwestern Bell	The standards for filing established by the Commission should be applied to all service providers. Made available to similarly situated customers under the same terms and conditions. Will bring substantial consumer benefits. LECs will be better able to price closer cost. Offer only in competitive markets subject to streamlined regulation. **(Cmts pp.68-69)** Commission rules must be relaxed. AT&T has used contract tariffs for years. GSA doesn't favor more restrictions. MFS (a LEC competitor) has over 1,300 contract offerings in federal tariffs. **(R. Cmts pp.33-34)**

TCA	Believes the proposal goes too far because competition in the access market has not taken hold to the point that substantial deregulation is warranted. **(Cmts p.5)** It is not clear that additional pricing flexibility is needed for fair competition or can be implemented in a nondiscriminatory manner.
Time Warner	Individually negotiated contracts have a high potential for abuse. It's difficult for competitors to know if they are eligible to receive the services. Therefore creates large risk of price discrimination and predatory pricing by the LEC. **(Cmts p.60)** One of the most important protections against market abuse is the accessibility by the public and LEC competitors of detailed information regarding such contracts.
TRA	Contract carriage should only be permitted for streamlined LEC services if competitive safeguards are adopted. **(Cmts pp.37-38)** Only for services subject to streamlined regulation and in geographic markets where LECs are subject so substantial competition. Tariffs should be filed on at least 14 days' notice. Additional requirements: 1) Make available to all resellers, 2) Provision orders within a reasonable time, e.g., 30 days, 3) Deposit requirements that are reasonable; 4) Establish reasonable termination provisions; and 5) Require advance customer approval for any material change to term plans. Commission should periodically evaluate the effects of contract carriage on the marketplace.
USTA	LECs should be able to offer services under individual tariffs under baseline regulation without a competitive showing. **(Cmts pp. 26-29)** If contract based services are offered on a common carrier basis, they must be offered to similarly situated customers under the same terms and conditions. Customers do not receive competitive prices because LECs can't offer contract based tariffs, so competitors price slightly below the LEC's tariffed rate. Introduction of contact based tariffs would rectify this situation. Contract based tariffs provides additional consumer benefits: 1) Can be tailored to specific needs; 2) Because contract based tariffs don't reflect averaged costs, rather specific costs, LECs' rates will be set closer to costs; 3) Knowledge that LECs can effectively bid will encourage other providers to make their best offers. Since the RFP process is competitive, unreasonable discrimination will not be realized, since customers can go elsewhere. (See CC Docket No. 93-36 Order, September 27, 1995.) The average tariff price will serve as an effective cap eliminating the concern of supracompetitive profits and the concern of discrimination. The Commission could also require the LECs to show that at least one other party responded to the RFP to show that the responses truly reflected competition. Contract offerings would be outside of price cap regulation. No downside risk in granting LECs contract based tariffs. No opportunity to create headroom. No risk of discrimination since competition exists. AT&T was permitted to use contract tariffs long before the Commission found the interexchange marketplace to be competitive. **(R.Cmts pp. 24-25)**

US West	Commission should allow contract carriage in response to RFPs in baseline regulation. **(Cmts pp.20-21)** An RFP is a widely used business practice for acquiring goods and services. Additional flexibility would provide a fair and competitive basis for such proposals to be considered on an equal basis. By mandating that agreements be available to similarly situated customers, the Commission has effectively precluded the likelihood of unreasonable preferential pricing. The Commission has reasonably proposed guidelines similar to AT&T. **(Cmts pp.43-44)** Customers will be the ultimate losers if the Commission does not act immediately to allow the LECs to offer competitive responses to other, possibly less efficient, providers.